IN THE SUPREME COURT OF THE STATE OF ALASKA

RESOURCE DEVELOPMENT COUNCIL FOR ALASKA, INC.; ALASKA TRUCKING ASSOCIATION, INC.; ALASKA MINERS ASSOCIATION, INC.; ASSOCIATED GENERAL CONTRACTORS OF ALASKA; ALASKA CHAMBER; and ALASKA SUPPORT INDUSTRY ALLIANCE, Appellants and Cross-Appellees, v. KEVIN MEYER, in his official capacity as Lt. Governor of Alaska, GAIL FENUMIAI, in her official capacity as Director of the Alaska Division of Elections, and STATE OF ALASKA, DIVISION OF ELECTIONS, Appellees, and VOTE YES FOR ALASKA'S FAIR SHARE, Appellee and Cross-Appellant.	)	Supreme Court No.: S-17834/S-17843 Trial Court Case No.: 3AN-20-05901CI

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
THE HONORABLE THOMAS A. MATTHEWS

BRIEF OF APPELLEES

Filed in the Supreme Court
of the State of Alaska
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Alaska Statutes

Alaska Regulations

Other Authorities

AUTHORITIES PRINCIPALLY RELIED UPON

Constitutional provisions:

Alaska Constitution Article XI, section 3

After certification of the application, a petition containing a summary of the subject matter shall be prepared by the lieutenant governor for circulation by the sponsors. If signed by qualified voters who are equal in number to at least ten percent of those who voted in the preceding general election, who are resident in at least three-fourths of the house districts of the State, and who, in each of those house districts, are equal in number to at least seven percent of those who voted in the preceding general election in the house district, it may be filed with the lieutenant governor.

Alaska Statutes:

§ 15.45.110. Circulation of petition; prohibitions and penalty

(a) The petitions may be circulated throughout the state only in person.

(b) [*Repealed by SLA 2000, ch. 82, § 92, eff. July 1, 2000*].

(c) A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition.

(d) A person or organization may not knowingly pay, offer to pay, or cause to be paid money or other valuable thing to a person to sign or refrain from signing a petition.

(e) A person or organization that violates (c) or (d) of this section is guilty of a class B misdemeanor.

(f) In this section,

(1) "organization" has the meaning given in AS 11.81.900;

(2) "other valuable thing" has the meaning given in AS 15.56.030(d);

(3) "person" has the meaning given in AS 11.81.900.

§ 15.45.120. Manner of signing and withdrawing name from petition.

Any qualified voter may subscribe to the petition by printing the voter's name, a numerical identifier, and an address, by signing the voter's name, and by dating the signature. A person who has signed the initiative petition may withdraw the person's name only by giving written notice to the lieutenant governor before the date the petition is filed.

§ 15.45.130. Certification of circulator.

Before being filed, each petition shall be certified by an affidavit by the person who personally circulated the petition. In determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted. The affidavit must state in substance

(1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;

(2) that the person is the only circulator of that petition;

(3) that the signatures were made in the circulator's actual presence;

(4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be;

(5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;

(6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);

(7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and

(8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

§ 15.45.140. Filing of petition.

(a) The sponsors must file the initiative petition within one year from the time the sponsors received notice from the lieutenant governor that the petitions were ready for delivery to them. The petition may be filed with the lieutenant governor only if it meets all of the following requirements: it is signed by qualified voters

> (1) equal in number to 10 percent of those who voted in the preceding general election;
>
> (2) resident in at least three-fourths of the house districts of the state; and
>
> (3) who, in each of the house districts described in (2) of this subsection, are equal in number to at least seven percent of those who voted in the preceding general election in the house district.

(b) If the petition is not filed within the one-year period provided for in (a) of this section, the petition has no force or effect.

§ 15.45.150. Review of petition.

Within not more than 60 days of the date the petition was filed, the lieutenant governor shall review the petition and shall notify the initiative committee whether the petition was properly or improperly filed, and at which election the proposition shall be placed on the ballot.

§ 15.45.160. Bases for determining the petition was improperly filed.

The lieutenant governor shall notify the committee that the petition was improperly filed upon determining that

(1) there is an insufficient number of qualified subscribers;

(2) the subscribers were not resident in at least three-fourths of the house districts of the state; or

(3) there is an insufficient number of qualified subscribers from each of the house districts described in (2) of this section.

§ 15.45.190. Placing proposition on ballot.

The lieutenant governor shall direct the director to place the ballot title and proposition on the election ballot of the first statewide general, special, special runoff, or primary election that is held after

(1) the petition has been filed;

(2) a legislative session has convened and adjourned; and

(3) a period of 120 days has expired since the adjournment of the legislative session.

Alaska Regulations:

6 AAC 25.240. Initiative, referendum, and recall petitions.

(g) The signatures contained in a petition booklet filed under (c) of this section will not be counted in determining the sufficiency of the petition if the person who circulated the petition did not complete the certification affidavit for the booklet as required by AS 15.45.130, 15.45.360, or 15.45.600.

PARTIES

The appellants accurately list the parties to this case. [At. Br. 1] In this brief, the appellants are referred to collectively by the name of the lead party, Resource Development Council, Inc. or "RDC." The appellees, Lieutenant Governor Kevin Meyer and the Division of Elections, are referred to as "the State." And the appellee/cross-appellant, Vote Yes for Alaska's Fair Share, is referred to as "Vote Yes."

ISSUES PRESENTED

1. *Invalidation of voter signatures as a remedy*. When an initiative petition is filed, the State has 60 days to determine whether the sponsors collected sufficient voter signatures. The lieutenant governor "may not count subscriptions on petitions not properly certified," and the certifying affidavit must state, among other things, that the circulator was not paid "greater than $1 a signature" (the limit in AS 15.45.110(c)). Where all circulators provided such an affidavit, did the lieutenant governor have an additional duty to investigate whether payment complied with AS 15.45.110, and invalidate the voter signatures collected if it did not?

2. *Constitutionality of payment cap*. The superior court interpreted AS 15.45.110(c) as an absolute cap on petition circulator pay, regardless of whether circulators were paid on a per-signature basis. With no factual record on the subject, the superior court then held that such a cap impermissibly burdens core political speech and invalidated the statute as unconstitutional. Given that this was unnecessary to resolve the case, should the superior court have struck down a validly enacted statute with no factual record about the burden?

INTRODUCTION

Alaska Statute 15.45.110(c) states that a circulator of an initiative petition in Alaska may not "receive payment that is greater than $1 a signature." Violation of that requirement is a criminal misdemeanor. The paid circulators who collected signatures in support of initiative 19OGTX all signed affidavits required by AS 15.45.130 affirming, among other things, that their pay did not violate AS 15.45.110(c).

Alaska Statute 15.45.130 requires this eight-point certification to be either filed with the signature booklets or "corrected before the [signatures] are counted." Here, having received over 39,000 valid signatures of registered Alaska voters, all accompanied by complete circulator affidavits, the lieutenant governor directed that initiative 19OGTX be placed on the ballot.

RDC challenges the lieutenant governor's acceptance of the voter signatures, interpreting AS 15.45.130 to require invalidation of voter signatures if the circulator who collected them was overpaid. But that statute, both independently and read in the context of the statutory scheme and this Court's precedents, requires only a complete circulator affidavit containing all eight statutorily required statements. All signatures accompanied by such an affidavit must be counted; only a missing or incomplete affidavit leads to exclusion of valid voter signatures under AS 15.45.130.

The statutory scheme provides the Division of Elections with neither authority nor adequate time to investigate the accuracy of the statements in circulator affidavits. Instead, the Division must focus on the labor-intensive process of verifying the *voters*'

signatures. The Alaska Legislature provided criminal penalties—not voter disenfranchisement—as a remedy to deter circulators from collecting signatures illegally.

RDC's claim that circulators were overpaid stems from disagreement over how to read AS 15.45.110(c)'s payment cap: RDC read it to prohibit *any* payment that exceeds $1 per signature, while Vote Yes contends that it merely caps the amount of payment on a per-signature basis, leaving hourly or salary payment available with no cap. But the superior court correctly concluded that regardless of which reading is correct, the remedy for a violation is not invalidation of voter signatures. That ruling is dispositive of this case; the remedy RDC seeks is unavailable. The court should not have gone farther.

Although it was unnecessary to decide this case, the superior court nevertheless chose an interpretation of AS 15.45.110(c) and then struck it down as unconstitutional. This unnecessary ruling was flawed, both because a court cannot properly evaluate the constitutionality of RDC's reading in a factual vacuum, and because the court should not have preferred an unconstitutional reading of an ambiguous statute where a plainly constitutional reading is available.

STATEMENT OF THE CASE

I. After proponents of an oil and gas tax initiative gathered signatures, the lieutenant governor determined that their petition was properly filed.

Because the superior court decided this case by granting a motion to dismiss, all facts stated in the complaint must be accepted as true.[1] The ballot initiative group Vote

[1] *Krause v. Matanuska-Susitna Borough*, 229 P.3d 168, 171 (Alaska 2010) ("Because the superior court granted a motion to dismiss the . . . complaint, we accept all factual allegations in the complaint as true.").

Yes drafted and submitted ballot measure 19OGTX[2] to the lieutenant governor for certification. [Exc. 4] 19OGTX proposes changes to production taxes on North Slope oil and gas. [*Id.*] The lieutenant governor certified the measure, and the Division of Elections printed signature booklets for circulation.[3] [*Id.*]

Vote Yes hired professional petition circulators to collect the signatures required by AS 15.45.140. [*Id.*] 544 of the 786 petition booklets eventually filed with the Division were submitted by these professional circulators. [Exc. 5] According to the complaint, Vote Yes paid the signature gatherers—through the company employing them—a monthly salary plus bonuses for their work. The amount of the payments was not on a "per signature" basis and did not depend on the number of signatures collected. In total, each circulator was paid an amount exceeding $1-per-signature collected. [Exc. 5-6]

Each petition booklet filed with the lieutenant governor was supported by an affidavit signed by the circulator, as required by AS 15.45.130. [Exc. 6] One of the eight statutorily required sworn statements in those affidavits was "that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c)," which is the $1 per signature limitation.

The Division of Elections confirmed that the petition circulators had signed the required affidavits, and checked the voter signatures to be sure the required number of

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[2] The full name of the initiative is "An Act changing the oil and gas production tax for certain fields, units, and nonunitized reservoirs on the North Slope." [Exc. 019]

[3] *See* AS 15.45.070, AS 15.45.090.

registered Alaska voters had signed.[4] [*See* Exc. 8-9] Finding that those requirements were met, the lieutenant governor determined on March 17, 2020 that the petition was properly filed and directed that 19OGTX appear on the November 3, 2020 general election ballot. [*See* Exc. 8-9, Exc. 19-21]

II. RDC challenged the lieutenant governor's determination that the petition was properly filed, alleging that signatures should have been invalidated because the petition circulators were paid in excess of $1 per signature.

Six groups supporting industry, collectively referred to in this appeal by the name of the lead plaintiff RDC, filed their complaint April 10, 2020, three weeks after the signatures were counted and 19OGTX was accepted for the ballot. [Exc. 9, 21] The complaint sought a declaration that the circulators' affidavits were "false" because the circulators "were paid in excess of $1 per signature." RDC asked the court to declare the booklets "not properly certified" and order that as a result, "the signatures in those booklets may not be counted." [Exc. 7] Finally, RDC requested injunctive relief in the form of "an order that Lt. Governor Meyer must invalidate those petition booklets and all subscriptions contained within those booklets as not properly certified." [Exc. 8]

The State moved to dismiss the complaint, arguing that neither AS 15.45.130 nor Alaska case law supports RDC's request for "wholesale invalidation of otherwise valid signatures" as a remedy for a circulator's violation of AS 15.45.110. [Exc. 22, 106] Joining the State's argument on remedy, Vote Yes similarly moved to dismiss. [Exc. 91] Vote Yes separately argued that its circulators were not overpaid and their affidavits were

[4] *See* AS 15.45.130; AS 15.45.150-.160.

not false because (1) AS 15.45.110(c) is best interpreted as allowing payment exceeding $1 per signature, so long as payment is made on an hourly basis or some other method besides "per signature," [Exc. 89] and (2) if AS 15.45.110(c) is interpreted to mean payment exceeding $1 per signature is forbidden no matter the basis of payment, the Statute violates the First Amendment. [Exc. 84]

Opposing the motions to dismiss, RDC argued for AS 15.45.110(c) to be interpreted as forbidding payment that totals more than $1 per signature collected, no matter the basis of payment, [Exc. 130] and that this interpretation withstands constitutional scrutiny. [Exc. 126] RDC also cross-moved for partial summary judgment on the remedy issue raised by the State. [Exc. 118] The cross-motion sought a legal ruling that "AS 15.45.130 prohibits the lieutenant governor from counting subscriptions supported by circulator affidavits that contain a false statement about compliance with AS 15.45.110(c)." [Exc. 223] And finally, after receiving discovery confirming that Vote Yes's petition circulators had in fact been paid salaries totaling more than $1 per signature collected, RDC moved for summary judgment. [Exc. 221]

III. The superior court granted the State's motion to dismiss, concluding that signature invalidation is not the remedy for payment of circulators in excess of $1 per signature.

Because RDC did "not assert[] a cause of action for which relief can be granted," the superior court granted the State's motion to dismiss and denied RDC's motion for partial summary judgment on the same legal issue. [Exc. 255-56] The court reasoned that because "the focus is on verification of signatures," and that "Alaskan voters should not be disenfranchised on the basis of 'technical errors," the statute should be construed such

that "properly certified" simply means "complete." [Exc 248, 249, 251] That ruling alone was sufficient to resolve the case.

But the superior court went much farther, granting Vote Yes's separate motion to dismiss on the grounds that the payment statute is unconstitutional. The court agreed with RDC that AS 15.45.110(c) prohibits *any* payment of petition circulators exceeding $1 per signature, regardless of the basis of payment. The court then invalidated the statute, so interpreted, concluding that it places an unconstitutional burden on the core political activity of legislating by initiative. [Exc. 256] The court also opined that if RDC were correct and AS 15.45.130 required signature invalidation as a remedy for overpayment of circulators, that statute would likewise be unconstitutional. [Exc. 255]

STANDARD OF REVIEW

This Court reviews the superior court's order granting a motion to dismiss de novo.[5] Issues of statutory interpretation and constitutional challenges to statutes are both questions of law that this court reviews de novo, "adopt[ing] the rule of law that is most persuasive in light of precedent, reason, and policy."[6]

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[5] *Jackson v. Borough of Haines*, 441 P.3d 925, 928 (Alaska 2019).

[6] *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*, 273 P.3d 1128, 1133-34 (Alaska 2012); *State, Division of Elections v. Green Party of Alaska*, 118 P.3d 1054, 1059 (Alaska 2005).

ARGUMENT

I. This Court should begin and end by affirming the superior court's dispositive ruling that AS 15.45.130 does not provide the remedy RDC requested.

To prevail in this appeal, RDC must persuade this Court of three separate points:

- That the remedy they seek for overpayment is available: i.e., if a petition circulator was paid more than AS 15.45.110(c) allows, the voter signatures gathered by that circulator must be invalidated under AS 15.45.130;
- That the circulators were overpaid under the statute: i.e., AS 15.45.110(c) forbids paying more than $1 per signature gathered, even if circulators are paid monthly or hourly rather than on a per-signature basis; and
- That such a payment limit is constitutional: i.e., their reading of AS 15.45.110(c) survives constitutional scrutiny under the U.S. Supreme Court's decision in *Meyer v. Grant*,[7] striking down a statutory prohibition on paying petition circulators.

If RDC is wrong about any one of these three legal propositions, its case cannot succeed.

The superior court granted the State's motion to dismiss under Alaska Rule of Civil Procedure 12(b)(6), which requires dismissal if the plaintiff has "fail[ed] to state a claim *upon which relief can be granted*."[8] Some courts refer to Rule 12(b)(6) motions as "so what?" motions;[9] that is, even if every fact in the complaint is true, the case fails anyway if the conduct alleged is not actionable or the relief sought is not available.[10]

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7 *Meyer v. Grant*, 486 U.S. 414 (1988).

8 Alaska R. Civ. P. 12(b)(6) (emphasis added).

9 *See, e.g.*, *Winters v. Wangler*, 898 N.E.2d 776, 779 (Ill. App. 2008) (a "motion [to dismiss for failure to state a claim] is sometimes referred to as a 'So what' motion.").

10 *E.g.*, *Alleva v. Municipality of Anchorage*, No. S-17302, -- P.3d -- 2020 WL 4249429, at *3 (Alaska July 24, 2020) (explaining that a Rule 12(b)(6) motion "tests the legal sufficiency of the complaint's allegations"); *Capri Sunshine, LLC v. E & C Fox Investments*, 366 P.3d 1214, 1217 (Ct. App. Utah 2015) ("A trial court's decision granting a rule 12(b)(6) motion to dismiss a complaint for lack of a remedy is a question of law that we review for correctness. . . .").

The language of Rule 12(b)(6) focuses on whether "*relief*" can be granted, and the State's motion to dismiss narrowly focused on the legal unavailability of the relief RDC seeks. Similarly on appeal, the State urges this Court to begin and end its analysis with the most straightforward and dispositive Rule 12(b)(6) issue— assuming that Vote Yes violated AS 15.45.110(c), is the remedy RDC seeks available?[11]

A. AS 15.45.130 does not contemplate invalidation of legitimate voter signatures if petition circulators were paid too much.

RDC's claim requires interpretation of AS 15.45.130, which requires circulators to certify, among other things, that they were not overpaid. The statute, titled "Certification of circulator," is three sentences long. The first sentence requires petition booklets containing voter signatures to "be certified by an affidavit by the person who personally circulated the petition." The third sentence requires that affidavit to "state in substance" eight points, including that the circulator was not overpaid:

(1) that the person signing the affidavit meets the residency, age, and citizenship qualifications for circulating a petition under AS 15.45.105;

(2) that the person is the only circulator of that petition;

(3) that the signatures were made in the circulator's actual presence;

(4) that, to the best of the circulator's knowledge, the signatures are the signatures of the persons whose names they purport to be;

(5) that, to the best of the circulator's knowledge, the signatures are of persons who were qualified voters on the date of signature;

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[11] *See, e.g.*, *Alleva*, 2020 WL 4249429 at *5 (noting "Rule 12's goal of promoting the efficient resolution of cases that can be decided early and without great expense to either side.").

(6) that the circulator has not entered into an agreement with a person or organization in violation of AS 15.45.110(c);

(7) that the circulator has not violated AS 15.45.110(d) with respect to that petition; and

(8) whether the circulator has received payment or agreed to receive payment for the collection of signatures on the petition, and, if so, the name of each person or organization that has paid or agreed to pay the circulator for collection of signatures on the petition.

The second sentence of AS 15.45.130 provides that "[i]n determining the sufficiency of the petition, the lieutenant governor may not count subscriptions on petitions not properly certified at the time of filing or corrected before the subscriptions are counted."

This court interprets a statute "according to reason, practicality, and common sense,"[12] considering "its language and purpose and its legislative history," attempting "to give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others."[13] The Court begins "with the text and its plain meaning," but uses "a sliding-scale approach to interpret the language."[14] "[T]he plainer the statutory language is, the more convincing the evidence of contrary legislative purpose or intent must be."[15] And that approach is required "even if a statute is facially unambiguous."[16] Here, all of these factors—the statute's text and purpose, along with reason, practicality, common sense—support the State's interpretation.

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12 *Adamson v. Municipality of Anchorage*, 333 P.3d 5, 11 (Alaska 2014).

13 *Alyeska Pipeline Serv. Co. v. DeShong*, 77 P.3d 1227, 1234 (Alaska 2003).

14 *Ward v. State, Dep't of Pub. Safety*, 288 P.3d 94, 98 (Alaska 2012).

15 *State v. Fyfe*, 370 P.3d 1092, 1095 (Alaska 2016).

16 *State, Commercial Fisheries Entry Comm'n v. Carlson*, 270 P.3d 755, 762 (Alaska 2012).

1. "Properly certified" means accompanied by an affidavit containing the eight points listed in the statute.

This Court has said that "the purpose of certification is to require circulators to swear to the truthfulness of their affidavits . . . *under penalty of perjury*."[17] The circulators did so here. RDC does not dispute that each of the 25,865 voter signatures at issue in this appeal was supported by a signed circulator affidavit stating the required eight points. [At. Br. 7][18] Nor does RDC ever suggest that any of those thousands of voters was unqualified to sign in support of the ballot initiative.

Nevertheless in RDC's view, the circulators' alleged violation of AS 15.45.110(c)—accepting pay in excess of $1 per signature collected—renders most of those signatures "not properly certified" and thus, uncountable under AS 15.45.130. According to RDC, the circulator's state of mind is irrelevant; their good faith belief in Vote Yes's contrary interpretation of the payment cap would make no difference. The excessive payment itself, not purported dishonesty in the circulators, is reason enough in RDC's view to toss out the signatures of thousands of voters. [At. Br. 28]

The superior court correctly rejected this interpretation and accepted the State's argument that the statute's "role is to assure completeness, not to determine whether the circulators have made a truthful and accurate affidavit of circulation." [Exc. 246-51] RDC seeks to find a "truthfulness" requirement in dictionary definitions of "properly," asserting that this word adds meaning beyond a mere requirement that the signatures be

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[17] *Nw. Cruiseship Ass'n of Alaska v. State, Office of Lieutenant Governor, Division of Elections*, 145 P.3d 573, 577 (Alaska 2006) (emphasis in original).

[18] 39,174 total signatures were verified in support of 19OGTX. [Exc. 19]

"certified." [At. Br. 32] And RDC is no doubt correct that "properly certified" must mean something more than simply "certified." But RDC finds more in the word "properly" than is actually there.

To "certify" something means "[t]o authenticate or verify in writing," or "[t]o attest as being true or as meeting certain criteria."[19] And, as RDC points out, the U.S. Supreme Court has described a habeas petition as "properly filed" if the filing is in "compliance with the applicable laws and rules governing filings."[20] The State agrees that "properly" means "according to the rules." [At. Br. 32] And the State has no quarrel with RDC's argument that "properly certified" means "authenticated according to the rules."

The superior court did not read out the word "properly," because the signatures were in fact "authenticated according to the rules." The court correctly concluded that AS 15.45.130 is most naturally read to mean that signatures are "properly certified" if accompanied by an affidavit certifying the required eight points. [Exc. 248] This is the most obvious "rule" the circulator's certification must follow: the eight-point list found in AS 15.45.130. A circulator cannot "properly certify" signatures by simply stating "I certify that I collected these signatures," or any other statement of his own creation. The substance of a "proper" certification is set forth in the statute.

The phrase "properly certified," does not require the Division to go farther and investigate the underlying veracity of the circulators' statements: for instance, whether

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19 Black's Law Dictionary (11th ed. 2019).

20 [At. Br. 32] (citing *Pace v. DiGuglielmo*, 544 U.S. 408, 413 (2005)).

the circulator "meets the residency, age, and citizenship qualifications," or was paid in violation of AS 15.45.110(c). Such an investigation is neither authorized nor required by the statute.[21] The lieutenant governor must simply confirm that the circulator affidavits are complete "at the time of filing," or, at a minimum, are "corrected before the subscriptions are counted." These statutory phrases support the State's argument that the lieutenant governor's obligation is a ministerial one—a basic compliance check, not a detailed investigation. The statute requires no more.

2. The constitutional, statutory, and regulatory scheme regarding initiatives confirms that voter signatures should not be invalidated as a remedy for a circulator payment violation.

When AS 15.45.130 is read alone, RDC's interpretation is at least plausible. But AS 15.45.130 is part of a coherent framework governing the initiative power, rooted in the Alaska Constitution and fleshed out in Chapter 45 of Title 15 (entitled "Initiative, Referendum, and Recall") and in a regulation filling in procedural details.[22] "When a statute . . . is part of a larger framework or regulatory scheme, even a seemingly unambiguous statute must be interpreted in light of the other portions of the regulatory whole."[23] And the initiative scheme as a whole confirms the soundness of the State's interpretation of AS 15.45.130.

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21 *See Bradshaw v. Ashcroft*, 559 S.W.3d 79, 88 (Mo. Ct. App. 2018) ("However, neither section, nor any other provision in Chapter 116, authorizes the secretary of state to look behind a circulator's notarized affidavit to determine its veracity or proper execution.").

22 6 AAC 25.240.

23 *Alaska Airlines, Inc. v. Darrow*, 403 P.3d 1116, 1127 (Alaska 2017).

The Alaska Constitution—the foundation of the people's power to legislate by initiative—says nothing about petition circulator pay or certification of petition signatures. Article XI, section 3 provides, in relevant part:

> If signed by qualified voters who are equal in number to at least ten percent of those who voted in the preceding general election, who are resident in at least three-fourths of the house districts of the State, and who, in each of these house districts, are equal in number to at least seven percent of those who voted in the preceding general election in the house district, it may be filed with the lieutenant governor.

The Constitution thus focuses on the required number of registered voter signatures, adding nothing about the petition circulation process or the lieutenant governor's task after voter signatures are filed with the Division.

The petition circulation and review process is governed by statute. Sponsors have one year to collect many thousands of "qualified voter" signatures in communities all over Alaska.[24] Once those thousands of signatures are filed, the lieutenant governor has only 60 days in which to count and verify each one—checking to confirm that each subscriber to the petition was a registered Alaska voter and whether sufficient signatures from sufficient house districts were collected.[25] AS 15.45.160 provides a list of three discrete reasons to support a finding that a "petition was improperly filed," and all concern the constitutionally required number of signatures.[26]

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24 AS 15.45.140

25 AS 15.45.150-.160.

26 The reasons are "an insufficient number of qualified subscribers," "the subscribers were not resident in at least three-fourths of the house districts in the state," and "there is an insufficient number of qualified subscribers from each of the house districts . . . ." AS 15.45.160.

Parallel sections of the recall statutes contain the same circulator pay cap and the same circulator certification requirement,[27] similarly requiring the lieutenant governor to quickly count and verify the signatures of many thousands of qualified Alaska voters.[28] Recall signatures must be verified even faster—in just 30 days.[29]

The statutes governing the process after filing—like the constitutional language itself—center on voter signatures, not circulator affidavits. Nothing in the broader statutory scheme supports RDC's suggestion that the lieutenant governor must—while voter signatures are being rapidly verified—also investigate the veracity of the eight statements in each of the many circulator affidavits that accompany the voter signatures. The short time frame and absence of any statutory procedure for such an investigation belie RDC's interpretation that "properly certified" means "certified by the circulator, whose statements are then investigated and found by the lieutenant governor to be true."

The Division's governing regulation on AS 15.45.130 is consistent with its interpretation here. 6 AAC 25.240(g) states that "[t]he signatures contained in a petition booklet . . . will not be counted in determining the sufficiency of the petition if *the person who circulated the petition did not complete the certification affidavit* for the booklet as required by AS 15.45.130." (Emphasis added.) That interpretation—requiring invalidation of voter signatures only if the circulator "did not complete" the required

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27 AS 15.45.580(b); AS 15.45.600.

28 AS 15.45.610.

29 *Id.*

affidavit, has been in force and applied by the Division since 2004.[30] "Although [this Court] generally rel[ies] on [its] independent judgment" to "decide questions involving pure statutory interpretation," the Court has "recognized that an agency's interpretation of a law within its area of jurisdiction can help resolve lingering ambiguity, particularly when the agency's interpretation is longstanding."[31] Here, the Division's longstanding interpretation provides yet another tool for resolving any ambiguity the Court may find in the statute in favor of counting valid signatures.[32]

RDC worries, as a policy matter, that without a remedy invalidating signatures supported by inaccurate circulator affidavits, the affidavit requirement will have no enforcement teeth.[33] Not so. The allegedly violated requirement in this case—the payment cap in AS 15.45.110(c)—carries a threat of criminal enforcement.

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30 In 2004, 6 AAC 25.240(g)(1) read "The signatures contained in a petition booklet filed under (c) of this section will not be counted in determining the sufficiency of the petition if the person who circulated the petition did not complete the certification on the back of the petition booklet." By 2006, 6 AAC 25.240(g) was identical to the language today.

31 *Bartley v. State, Dep't of Admin., Teacher's Ret. Bd.*, 110 P.3d 1254, 1261 (Alaska 2005) (citing *Union Oil Co. v. State, Dep't of Revenue*, 560 P.2d 21, 23, 25 (Alaska 1977) and 2B Norman J. Singer, Sutherland on Statutes and Statutory Construction § 49:05, at 52-53 (6th ed. 2000) ("Ordinarily, courts should give great weight to the frequent, consistent, and long-standing construction of a statute by an agency charged with its administration, particularly with respect to a statute that is susceptible of two different interpretations.")).

32 *Bartley, Teacher's Ret. Bd.*, 110 P.3d at 1261.

33 [At. Br. 34-35] (arguing that a separate penalty should exist "for falsely certifying compliance with the cap" and that the criminal remedy in AS 15.45.110(e) does not apply to the other certifications in AS 15.45.130 besides the cap).

AS 15.45.110(e) makes violation of the payment cap by either "a person or an organization" a class B misdemeanor.

RDC argues that if this is the only remedy for a violation of a payment cap, no remedy exists for the separate wrong of making a false statement about any of the other important points in the required affidavit. But the election statutes separately criminalize false certification of any of the points in AS 15.45.130. Alaska Statute 15.56.040 forbids "intentionally mak[ing] a false affidavit, swear[ing] falsely, or falsely affirm[ing] under an oath required by this title." Such conduct—which plainly covers intentionally false statements by a petition circulator under AS 15.45.130—is a class C felony, an even more serious crime than violating the payment cap.[34] Falsely swearing to *any* of the points in a circulator affidavit could thus have serious criminal consequences.

And if the circulator's affidavit turns out to be false on the required statements about the identity or qualifications of the voters, those problems will result in exclusion of the faulty signatures not because the circulator's affidavit is false, but because the voter signatures themselves are improper. The Division's process (like the constitution and statutes) focuses on the *voters' qualifications*; the circulator's certification merely serves as an additional check on the voter signatures' legitimacy.

[34] More generally, a person who knowingly "makes a false sworn statement" on any subject commits the crime of perjury—a class B felony. AS 11.56.200.

B. This Court's cases require a liberal reading of the initiative statutes that protects the people's lawmaking power.

Not only does the constitutional and statutory framework support the State's interpretation, but the Court's cases on the initiative power do too. The Court has regularly emphasized that "[i]n matters of initiative and referendum . . . , the people are exercising a power reserved to them by the constitution and the laws of the state," and therefore, "the constitutional and statutory provisions under which they proceed should be liberally construed."[35] To that end, "all doubts as to all technical deficiencies or failure to comply with the exact letter of procedure will be resolved in favor of the accomplishment of that purpose."[36] The Court " 'preserve[s] [initiatives] whenever possible,' "[37] and "seek[s] 'a construction [of statutes and regulations] . . . which avoids the wholesale dis[en]franchisement of qualified electors.' "[38]

Because of these principles, a similar voter-protective construction passed muster in *North West Cruiseship Ass'n of Alaska v. State, Office of the Lieutenant Governor*.[39] There, certain pages of petition booklets lacked a then-required disclosure that the

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35 *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1181 (Alaska 1985) (quoting *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974)); *see also Nw. Cruiseship Ass'n of Alaska v. State, Office of Lieutenant Governor, Division of Elections*, 145 P.3d 573, 577 (Alaska 2006); *Planned Parenthood of Alaska v. Campbell*, 232 P.3d 725, 729 (Alaska 2010).

36 *Yute Air*, 698 P.2d at 1181 (quoting *Boucher*, 528 P.2d at 462).

37 *Planned Parenthood*, 232 P.3d at 729 (citing *Pullen v. Ulmer*, 923 P.2d 54, 58 (Alaska 1996)).

38 *Nw. Cruiseship Ass'n*, 145 P.3d at 578 (quoting *Fischer v. Stout*, 741 P.2d 217, 225 (Alaska 1987)).

39 *Id.*

circulator was being paid, and by whom.[40] Under the regulation implementing that requirement, no signature in the book was to be counted if *any page* was missing the payment disclosure.[41] Despite this unambiguous statutory and regulatory directive, the Division disqualified only the signatures on the specific pages that lacked the required information.[42] This Court thus struck "a balance between the people's right to enact legislation by initiative" on one side and the regulation "requiring that potential petition subscribers be made aware" of circulators' possible financial motivations on the other.

The balance here weighs even heavier towards counting all voter signatures, even if the certification about circulator pay was incorrect. In this case, the people's right to legislate by initiative lies on one side of the scale, but the countervailing interest in *North West Cruiseships*—disclosure to voters of circulator financial incentives—is no longer part of the statutory scheme and thus, no longer part of the analysis.[43] The Legislature sought in AS 15.45.110(c) to limit the amount of payment to circulators. But today's statutes and regulations do not require any disclosure about circulator pay to would-be voter signatories. From the perspective of the voter adding a signature to support 19OGTX then, circulator pay is invisible; AS 15.45.110(c) operates only to regulate circulators' personal incentives.

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40 *Id.*

41 *Id.*

42 *Id*.

43 *See id.* ("[C]ounting the signatures from the pages containing the proper "paid-by" information reflects the balance sought by the legislature between the people's right to legislate by initiative and the goal of ensuring that petition subscribers are well-informed upon signing.").

Given this precedent, the State's interpretation prevails: the tens of thousands of qualified voters who signed to support 19OGTX should not have their will thwarted simply because—unbeknownst to them—the people collecting their signatures may have been paid too much. The voters had no role in, and were not impacted by, any such statutory violation; only the circulators and the people who paid them should bear any consequences. The statutory remedy for such a violation appears in AS 15.45.110(e), providing a criminal sanction, not in AS 15.45.130.

C. Cases from other jurisdictions do not alter the result.

RDC insists that the weight of authority from other jurisdictions supports its interpretation that AS 15.45.130 requires signature invalidation as a remedy for circulator overpayment. But in each case RDC relies upon, the grounds for signature invalidation rest on different authority and present inherent trustworthiness concerns not present here.

In *Maine Taxpayers Action Network v. Secretary of State*,[44] an evidentiary hearing established that a circulator was operating under a stolen identity. The court upheld the executive branch's decision to invalidate the signatures that untrustworthy circulator had collected, relying on Maine's "well-established" "plenary power to investigate and determine the validity of petitions."[45] Similarly in *Montanans for Justice v. State ex rel. McGrath*, an evidentiary hearing established that signature gatherers had executed fraudulent affidavits "attesting that they personally gathered or assisted in gathering signatures that someone else actually gathered outside of their presence without any

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44 *Maine Taxpayers Action Network v. Sec'y of State*, 795 A.2d 75, 78 (Me. 2002).

45 *Id.* at 80 & n.8.

direct assistance from them," along with extensive additional "deceptive behavior."[46] Because it was "impossible to precisely identify which certified signatures were untainted by [the] signature gatherers' various deceptive practices," the court invalidated them all.[47]

The Arizona court in *Brousseau v. Fitzgerald* drew a distinction between "[d]efects either in circulation or signatures," which are "matters of form and procedure," versus "the filing of a false affidavit by a circulator," which "is a much more serious matter involving more than a technicality."[48] The false affidavits in that case were shown at trial to have been fraudulently executed, with individuals claiming to have collected signatures that were actually collected by others.[49]

Here, no such intentional deception by circulators has ever been alleged nor has any evidence been presented to show it. The complaint alleges only that the circulators were paid more money than AS 15.45.110(c) allows. Vote Yes interprets that law differently than RDC does, such that its circulators could have verified their compliance with the payment cap in good faith.

Other cases cited by RDC have nothing to do with false affidavits. In *Schmelzer v. Board of Elections of Cuyahoga County*,[50] the Ohio Supreme Court invalidated

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46 *Montanans for Justice v. State ex rel. McGrath*, 146 P.3d 759, 770-74 (Mont. 2006).

47 *Id.* at 776. *In re Initiative Petition No. 379, State Question No. 726* also involved "overwhelming evidence" "establish[ing] a pervasive pattern of wrongdoing and fraud" by petition circulators. 155 P.3d 32, 34 (Ok. 2006).

48 *Brousseau v. Fitzgerald*, 675 P.2d 713, 715 (Ariz. 1984).

49 *Id.* at 714.

50 *Schmelzer v. Board of Elections of Cuyahoga County*, 440 N.E.2d 801, 803 (Ohio 1982)

signatures gathered by a specific circulator who was not eligible to gather signatures under Ohio law. In contrast to Alaska, "[i]t is well settled in [Ohio] 'that election statutes are mandatory and must be strictly complied with.' "[51] Alaska law, by contrast, instructs courts to resolve "all doubts as to all technical deficiencies or failure to comply with the exact letter of procedure" in favor of the initiative process.[52]

Similarly, in the Arkansas case *Benca v. Martin*, no signatures were invalidated because circulators provided false affidavits.[53] Rather, the statutes required that the names of paid circulators be disclosed to the Secretary of State *before* they began to collect signatures, and these signatures were gathered by circulators whose names were disclosed late or not at all. The court invalidated the signatures because of a clear statutory directive that "[s]ignatures incorrectly obtained or submitted under this section [requiring disclosure of circulators] shall not be counted by the Secretary of State."[54] Similarly in Alaska, under the State's interpretation of AS 15.45.130, a petition turned in without a circulator affidavit cannot be counted because it is not "properly certified." But the Alaska statute prohibiting payment of more than a dollar per signature contains no instruction not to count signatures gathered in violation of that rule.[55] Instead, it simply imposes criminal penalties for any violations.[56]

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51 *Id.* (quoting *State, ex rel. Senn v. Bd. of Elections*, 367 N.E.2d 879 (Ohio 1977)).

52 *Yute Air*, 698 P.2d at 1181 (quoting *Boucher*, 528 P.2d at 462).

53 *Benca v. Martin*, 500 S.W.3d 742, 749 (Ark. 2016).

54 *Id.*

55 *See* AS 15.45.110.

56 AS 15.45.110(e).

Alaska law is also consistent with the view of the Missouri Supreme Court in *United Labor Committee of Missouri v. Kirkpatrick*, which emphasized that the constitutional right to initiative "by the required number of legal voters should not be lightly cast aside"[57] and rejected the argument that false certification automatically invalidated signatures. That court found that validation of signatures, as shown through voter registration list checks and testimony of circulators, overcame any problem created by false notarization of petitions.[58] The court did "not condone the improper signing by circulators of initiative petitions or of affidavits," noting that the Missouri Legislature made that a crime "punishable by up to two years in the penitentiary."[59] But the remedy for "those who swore false oaths"—in Missouri as in Alaska—is criminal prosecution, not "nullification of the good faith subscription by the voters to the petitions."[60]

Because RDC has never alleged that the signatures gathered by Vote Yes and counted by the Division do not represent the genuine support of qualified Alaska voters, this Court should similarly hold that the remedy for any violation of AS 15.45.110(c) lies in the criminal prosecution provided in AS 15.45.110(e), and not in the wholesale disenfranchisement of nearly 40,000 Alaska voters.

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57 *United Labor Committee of Missouri v. Kirkpatrick*, 572 S.W.2d 449, 453 (Mo. 1978); *see also, e.g.*, *Bradshaw v. Ashcroft,* 559 S.W.3d 79 (Mo. Ct. App. 2018); *Lefkowitz v. Cohen*, 29 N.Y.S.2d 817, 820-21 (N.Y.A.D. 1 Dept., 1941) (holding that voters "should not lose their right to designate a candidate simply because others over whom they have no control may have perpetrated a wrong.").

58 *Id*. at 456.

59 *Id.*

60 *Id*. at 456-57.

II. The superior court need not have reached—and this Court also need not reach—the interpretation or constitutionality of AS 15.45.110(c).

The superior court could have simply granted the State's motion to dismiss on the grounds that RDC's requested remedy is unavailable under AS 15.45.130 and stopped there. Instead, the court ruled in the alternative, selecting between RDC's and Vote Yes's competing interpretations of the circulator payment cap in AS 15.45.110(c). The court concluded that "if a circulator received payment that ended up being greater than $1 per signature, no matter how it was received," the statute prohibits it. [Exc. 235, 238] The court then went even farther, concluding that such an absolute cap, like the complete prohibition on circulator payment struck down in *Meyer v. Grant*,[61] so far restricts political expression that it violates the First Amendment. [Exc. 240-46]

This alternative path supporting dismissal—striking down a state statute when a narrower ruling on remedy would do—was both unnecessary and flawed. Worse, the superior court made its findings on the constitutionality of the statute in the absence of the necessary factual record. This court need not address these difficult questions here. To do so in light of the clear unavailability of the remedy RDC seeks would approach the territory of mootness and advisory opinions.[62]

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61 *Meyer v. Grant*, 486 U.S. 414 (1988).

62 *Alaska Cmty. Action on Toxics v. Hartig*, 321 P.3d 360, 366 (Alaska 2014) ("A claim is moot if there is no present, live controversy or if it is impossible to provide the relief sought.") (internal quotation marks omitted); *Ahtna Tene Nene v. State, Dep't of Fish & Game*, 288 P.3d 452, 457-58 (Alaska 2012) (recognizing in a case where "the relief sought by the parties is no longer available through court intervention," the Court "must be especially careful while reviewing requests for a declaratory judgment because those cases may easily become advisory opinions if the controversy is moot.").

A. AS 15.45.110(c) is ambiguous and can rationally be read as either an absolute cap or a cap only on per-signature payment.

RDC alleges that Vote Yes and its paid circulators violated AS 15.45.110(c), which reads in full:

> A circulator may not receive payment or agree to receive payment that is greater than $1 a signature, and a person or an organization may not pay or agree to pay an amount that is greater than $1 a signature, for the collection of signatures on a petition.

In RDC's view, this statute imposes an absolute cap. No matter the basis of payment—hourly, monthly, or otherwise—the total amount cannot work out to more than $1 for each signature the circulator ultimately collects. [Exc. 130-31] This reading effectively limits payment of circulators to a single type of payment arrangement, per signature, because any other approach could inadvertently violate the cap depending on the resulting number of signatures the circulator manages to collect, a number that is unknowable in advance. In contrast, Vote Yes believes the statute leaves other payment arrangements available, such as an hourly rate or a monthly salary untethered from the success of the circulator's efforts. [Exc. 79-80] Under Vote Yes's reading, a circulator can be paid the same amount whether she collects 4,000 signatures in a month or only 40, and AS 15.45.110(c) does not limit circulator pay under that arrangement.

The superior court's statutory interpretation rested on its view that the "plain language," of the statute contains "no ambiguity." [Exc. 234-35] But both RDC and Vote Yes put forth plausible constructions of the statutory language. The phrases "payment that is greater than $1 a signature" and "an amount that is greater than $1 a signature" are hardly a model of clarity. They could describe either a cap on payment only if made on a

per-signature basis, or they could describe an absolute cap on total payment, even if pay is hourly or on a salary basis.

Invoking the statute's legislative history, Vote Yes focused on the bill sponsor's statement that "payment would still be allowed by the hour or any other method," because of concerns about the constitutionality of an outright cap. [Exc. 236] The superior court acknowledged that "the bill was introduced intending to restrict . . . signature-based payments," but relied heavily on the Legislature's consideration—and ultimate omission—of a sentence that would have clarified that payment could be made in amounts "not based on the number of signatures collected." [Exc. 236-37] Although the court's analysis rested primarily on a supposed unambiguity of the statute's plain language, the court inferred from this history that the Legislature had knowingly selected a constitutionally risky limitation. [Exc. 238]

B. The superior court struck down AS 15.45.110(c) based on pure speculation, without any a factual record analyzing the purported burden on political speech.

Having determined that AS 15.45.110(c) unambiguously caps circulator payment at a "hard limit" of $1 per signature, no matter the basis for pay, the superior court moved on to the fact-intensive constitutional question raised by Vote Yes: whether such a hard limit unduly burdens First Amendment rights. [Exc. 242-45] Making its case to strike down the statute if so construed, Vote Yes looked to *Meyer v. Grant*, in which the U.S. Supreme Court struck down a complete prohibition on circulator pay.[63] [Exc. 239]

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63 *Meyer*, 486 U.S. at 416.

The U.S. Supreme Court in *Meyer* applied strict scrutiny because the prohibition on any circulator payment at all would reduce signature gathering activity, reducing initiative sponsors' likelihood of reaching the ballot, and generally "restrict[ing] political expression."[64] [Exc. 240] As the superior court explained, the *Meyer* Court "weigh[ed] the character and magnitude of the asserted injury to the rights protected . . . against the precise interest put forward by the State as justifications for the burden imposed by its rule." [Exc. 239][65] The Court concluded that the heavy burden imposed by the payment ban asked was not "narrowly tailored" to the interests Colorado had advanced to justify that ban.[66] [Exc. 239]

But unlike the superior court here, the *Meyer* court performed this analysis with the benefit of factual findings developed through trial about the impact of the payment ban in Colorado.[67] Other cases considering the burden of a payment restriction on the people's right to legislate by initiative have similarly considered *evidence* put forward by states and petition circulators about the interests involved and the implications of the restriction at issue on those interests.[68]

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64 *Id.* at 419, 422-23.

65 *See id.* at 425-26.

66 *Id.* at 426-27.

67 *Id.* at 417-18.

68 *E.g.*, *Prete v. Bradbury*, 438 F.3d 949, 955, 964 (9th Cir. 2006) (holding, after taking evidence from the state and professional petition circulators, that Oregon's statutory prohibition on per-signature circulator payment did not unduly burden political activity); *Initiative & Referendum Inst. v. Jaeger*, 241 F.3d 614, 618 (8th Cir. 2001) (upholding a similar North Dakota restriction based on evidence regarding the state interest in banning per-signature payment and the lack of evidence that other forms of payment were inadequate to support signature gathering activity).

Here, by contrast, the State moved to dismiss solely on the basis of remedy, taking no position about the meaning or the constitutionality of the statute. [*See* Exc. 244 n.88] The State did not weigh in on constitutionality because this case can and should be resolved efficiently without addressing the issue,[69] not because it has no interest in defending validly enacted statutes as the superior court suggests. The court nevertheless speculated about what State interests might underlie the circulator pay cap, and commented about the absence of any "evidence or argument" demonstrating how the limit could be narrowly tailored to its imagined State interests. [Exc. 244-45]

The superior court engaged in a similarly speculative exercise to conclude that limiting payment to $1 a signature would severely burden political speech in Alaska. The court observed that "the effort necessary to assure the minimum number of signatures" varies tremendously in different geographic parts of Alaska, and where signature gathering is particularly costly, $1 per signature would "surely infringe on [a] fundamental right." [Exc. 243] This conjecture, however intuitive, finds no support in a record that contains little more than briefing on the parties' Rule 12(b)(6) motions. And given the fact-intensive nature of the analysis here, the statute does not lend itself to a

[69] *Alleva v. Municipality of Anchorage*, No. S-17302, -- P.3d -- 2020 WL 4249429, at *3 (Alaska July 24, 2020) (noting "Rule 12's goal of promoting the efficient resolution of cases that can be decided early and without great expense to either side.").

facial challenge.[70] The superior court was simply in the wrong procedural posture to make those findings.[71]

C. A statute must be preserved if a constitutional reading is available.

Setting aside the inappropriateness of ruling without a factual record, the Court also drew the wrong conclusion from its determination that an absolute cap would be unconstitutional. A court must employ the canon of constitutional avoidance to save an unconstitutional statute where—as here—a different interpretation raises no constitutional concerns.[72] As this Court has explained, "[i]f an ambiguous text is susceptible to more than one reasonable interpretation, of which only one is constitutional, the doctrine of constitutional avoidance [requires] adopt[ing] the interpretation that saves the statute."[73] Where one possible interpretation "would be

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[70] *Dapo v. State*, 454 P.3d 171, 180 (Alaska 2019) ("An as-applied [constitutional] challenge requires evaluation of the facts of the particular case in which the challenge arises."); *Brause v. State, Dep't of Health & Soc. Servs.*, 21 P.3d 357, 362 (Alaska 2001) ("A facial challenge to the validity of an enactment generally presents such a concrete controversy; the question is whether the challenged enactment is valid as written, as opposed to validly applied to a given set of facts.").

[71] *See, e.g.*, *Larson v. State, Dep't of Corr.*, 284 P.3d 1, 7 (Alaska 2012) (when deciding motions to dismiss under Rule 12(b)(6), courts should "not consider matters outside the complaint").

[72] *E.g.*, *Clark v. Martinez*, 543 U.S. 371, 381 (2005) (explaining that the canon of constitutional avoidance "is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts.").

[73] *State v. Planned Parenthood of the Great Nw.*, 436 P.3d 984, 992 (Alaska 2019).

unconstitutional and by the other valid, [the Court's] plain duty is to adopt that which will save the Act."[74]

Thus, even if Vote Yes had created a factual record establishing the unconstitutionality of AS 15.45.110(c) as read by RDC and the superior court, the court would have been required to choose the other possible interpretation of the statute in order to preserve it. The superior court should not have struck down an ambiguous statute where a plainly constitutional alternative reading was available.

CONCLUSION

The Court should affirm the judgment of the superior court on the ground that AS 15.45.130 does not support invalidation of voter signatures in support of initiative 19OGTX, and should decline to reach the other issues because they are unnecessary to the resolution of this case.

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[74] *Estate of Kim ex rel. Alexander v. Coxe*, 295 P.3d 380, 388 (Alaska 2013).